

*Held*, that as the deed did not carry out the real intention of the parties, the trial judge was right in directing it to be rectified so as to convey the interest of the defendant alone in the lots described.

*Held* also, that as the deed contained an express warranty, no other covenant on the same subject could be implied.

*Quaere*, Whether an action for breach of covenant would lie on a warranty where the warranty is in a freehold conveyance, and the freehold is called in question.

*Held* also, that assuming an action would lie in this case for breach of covenant for quiet possession, or warranty, no sufficient breach had been proved, the alleged disturbance of possession not having been made by defendant, or any one claiming under him.

*F. B. Wade*, Q.C., for appellant. *W. B. A. Ritchie*, Q.C., for respondent.

Full Court.]

MARSHALL *v.* MATHESON.

[May 23.]

*Counterclaim—Evidence to support judgment for defendant upon—Costs.*

In an action by plaintiff against defendant on a promissory note, the latter counterclaimed for damages on account of the failure of plaintiff to deliver goods according to contract, by which defendant was prevented from making sales and lost commissions, etc. The evidence given in support of the claim went to show that some parties refused to take goods on account of delay in the delivery of them, but it was not shown how many persons so refused, or what quantity of goods they refused to take, or the dates or times at which the alleged refusals were made.

*Held*, that the evidence was insufficient to support the judgment in defendant's favor on the counterclaim, and that the appeal as to the counterclaim must be allowed with costs, but as plaintiff appeared to have been somewhat in fault, that the counterclaim should be set aside without costs.

*J. A. Chisholm*, for appellant. *H. McInnes*, for respondent.

Full Court.]

GUILD *v.* DODD.

[May 23.]

*Action for conversion—Question for trial judge—Costs.*

In an action brought by plaintiff against defendant to recover damages for the conversion of a quantity of hay, plaintiff's right to recover depended upon whether the hay in question was "upland" or "intervale."

*Held*, dismissing plaintiff's appeal with costs, that the question was peculiarly one for the trial judge, the evidence being contradictory, and the question being one that the judge has exceptional advantages for determining.

*F. A. Laurence*, Q.C., for appellant. *H. A. Lovett*, for respondent.

Full Court.]

FEINDEL *v.* ZWICKER.

[May 23.]

*Trespass—Counterclaim for rectification of deed—False and fraudulent representations as to boundary of land bargained for—Remedy against vendor.*

Plaintiff agreed to sell to defendant a lot of land extending up the river as far as the line of property of G., which line was represented as being marked